

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claims 1, 4, 6-8, 11-14, 16, 19, 21, 24, 26, 31, 32, 33, 34, 36, 39, 41, and 42 are currently being amended.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 1, 2, 4-19, 21, 22, 24, 26-39, and 41-50 are now pending in this application.

Claims 1, 4, 6-8, 11-14, 16, 19, 21, 24, 26, 31, 32, 33, 34, 36, 39, 41, and 42 have been amended for clarification and consistency purposes only. In making these amendments, no new matter has been added, and Applicant is not intending to narrow the scope of the claims in any way.

In the February 10, 2006 office action, the Examiner allowed claims 19, 39, 42, 45, 48, and 50. While Applicant thanks the Examiner for indicating the allowability of the above claims, Applicant submits that the Examiner's reasons for allowance were directed to limitations not found in claims 19, 39, 42, 45, 48, and 50 of the present application. In section 10 of the outstanding office action, the Examiner stated that neither Peterson et al., Gilbert et al., nor Nagoya teach "at least one monitoring criterion comprising the number of transmitted data bursts associated with the heat generated by the transmitter."¹ In addition, the Examiner stated that Gilbert et al. and Nagoya et al. were not combinable as argued by Applicant on pages 14-16 of Applicant's amendment.² Although Applicant agrees that none

¹ The Nagoya reference is not applied in this outstanding office action. Applicant believes that the Examiner was referring to U.S. Patent No. 5,854,971 (Nagoya et al.) cited in the previous office action dated July 28, 2005, and considered separately for allowance purposes in the outstanding office action.

² It is believed that the Examiner was referring to Applicant's amendment filed May 31, 2005.

of the cited references teach monitoring criterion comprising the number of transmitted data bursts associated with the heat generated by the transmitter, Applicant respectfully submits that this limitation is not recited in claims 19, 39, 42, 45, 48, and 50. This limitation is however recited in claims 1, 21, and 41. Therefore, Applicant submits that claims 1, 21, and 41 are allowable over the cited prior art for the reasons the Examiner has given discussed above, while claims 19, 39, 42, 45, 48, and 50 are still allowable for the reasons set forth below.

The Examiner rejected claims 11-13, 15, 17, 18, 31-33, 37, 44, and 47 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,072,788 (Peterson et al.) Claims 1, 2, 4, 5, 7-9, 16, 21, 22, 24, 25, 27-30, 41, 43, and 46 were rejected under 35 U.S.C. §103(a) as being unpatentable over Peterson et al. in view of U.S. Patent No. 5,519,886 (Gilbert et al.) Claim 10 was rejected under 35 U.S.C. §103(a) as being unpatentable over Peterson et al., Gilbert et al., and further in view of U.S. Patent No. 6,169,884 (Funk). Claims 6, 14, and 26 were rejected under 35 U.S.C. §103(a) as being unpatentable over Peterson et al., Gilbert et al., and further in view of U.S. Patent No. 4,636,741 (Mitzlaff). Claim 34 was rejected under 35 U.S.C. §103(a) as being unpatentable over Peterson et al. in view of Mitzlaff. Claim 35 was rejected under 35 U.S.C. §103(a) as being unpatentable over Peterson et al. in view of U.S. Patent No. 6,067,458 (Chen). Claim 36 was rejected under 35 U.S.C. §103(a) as being unpatentable over Peterson et al., Chen, and further in view of Gilbert et al. Claim 38 was rejected under 35 U.S.C. §103(a) as being unpatentable over Peterson et al. in view of Funk. Applicant respectfully traverses the rejection for the reasons set forth below.

The Examiner asserted that Peterson et al. teaches a method and apparatus for controlling a transmitter of a portable radio communication apparatus, where the number of data bursts transmitted on time slots are monitored and compared with a predetermined limit, and where the transmission power level of the transmitter is decreased if the number of data bursts falls outside the predetermined limit. Applicant respectfully disagrees with the Examiner's position. In particular, Applicant submits that Peterson et al. does not teach changing the operation of a transmitter depending on whether or not the number of data bursts falls outside a predetermined limit.

Peterson et al. teaches a system and method of adjusting transmission power in a cellular antenna depending on overlap and the power needed to sustain communications. (*See* column 1, lines 15-19 and column 2, lines 1-24). Although column 3, lines 24-36 (cited by the Examiner to support his position), mentions a carrier to interference (C/I) ratio, Peterson et al. fails to teach or suggest comparing that C/I ratio to a predetermined limit because no suggestion whatsoever is made contemplating, let alone utilizing, a predetermined limit. In fact, Peterson et al. merely indicates that the C/I ratio will change according to power adjustments. (*See* column 3, lines 29-36). By contrast, claim 11, for example, clearly requires the existence of a predetermined limit for comparison. (*See* also Applicant's arguments submitted in the office action response filed December 2, 2005). In addition, the Examiner interpreted the C/I ratio as the parameter being monitored by the system of Peterson et al. Applicant submits that although Peterson et al. alludes to the desirability of increasing the C/I ratio, nowhere is it suggested that the C/I ratio is actually monitored. Furthermore, even if the Examiner's assertion that the C/I ratio is monitored were correct, Peterson et al. would still fail to teach the claimed limitations of the present application, because claim 11, for example, requires that the number of data bursts is monitored, not a performance parameter, such as the C/I ratio. Lastly, Applicant submits that Peterson et al. does not teach monitoring the number of data bursts in a transmission, nor decreasing the number of data bursts transmitted in a frame. Peterson et al. merely teaches adjusting the power level of each data burst outputted from individual antennae. This is clearly described in column 7, lines 4-16 and column 8, lines 45-59. By contrast, claim 15 of the present application, for example, requires that the actual number of data bursts transmitted in a frame is controlled. Therefore, Peterson et al. fails to anticipate claims 11-13, 15, 17, 18, 31-33, 37, 44, and 47 of the present application.

The Examiner correctly recognized that Peterson et al. does not teach or suggest monitoring criterion associated with heat generated by the transmitter and selectively adjusting the transmitter output in direct response to the monitored criterion. However, the Examiner asserted that Gilbert et al. teaches these features that are lacking in Peterson et al. Applicant respectfully disagrees with the Examiner's position. In particular, Applicant submits that Gilbert et al. does not teach or suggest adjusting transmitter output according to

the heat generated by the transmitter, where the number of transmitted data bursts in a frame is associated with that generated heat. Gilbert et al. teaches monitoring transmitter heat or temperature. However, the adjustments made in response to the monitoring comprise segmenting a message into smaller packets and/or delaying transmission of a message by delaying one or more packets of data. (*See* column 4, lines 21-48). Segmenting a message indicates merely sending a smaller payload in each data burst, but still transmitting the same number of data bursts per frame. Delaying the transmission of a packet merely indicates waiting to transmit a packet of data in a later frame, but still transmitting the same number of data bursts. Moreover, Gilbert et al. does not teach or suggest monitoring the actual number of data bursts transmitted in a frame. Therefore, Gilbert et al. fails to cure the deficiencies of Peterson et al.

It should be noted that in the Examiner's reasons of allowance of claims 19, 39, 42, 45, 48, and 50, the Examiner already determined that neither Peterson et al. nor Gilbert et al., either alone or in combination, teach monitoring at least one criterion associated with heat generated by the transmitter, where the criterion comprises the number of transmitted data bursts in a frame. Applicant submits that this reasoning is commensurate with Applicant's arguments discussed above. Therefore the apparent contradiction in the Examiner's interpretation of Peterson et al. and Gilbert et al. should be resolved in favor of Applicant's position.

In response to the Examiner's position regarding Mitzlaff, the Examiner asserted that Mitzlaff teaches changing the power class in a transceiver, thus curing the deficiencies of Peterson et al. Applicant respectfully disagrees with the Examiner's position. In particular, Applicant submits that it would not have been obvious for one of ordinary skill in the art to have combined the teachings of Mitzlaff with Peterson et al. Mitzlaff merely teaches adjusting power classes. However, Mitzlaff teaches such a feature only in response to connecting the transmitter to a stronger battery or having a stronger voltage applied to the transmitter. Furthermore, the only monitoring performed in Mitzlaff involves monitoring whether or not the transmitter is connected to a vehicular battery adapter. (*See* column 3, line 61-column 4, line 15). By contrast, claim 19, for example, requires that the powerclass of a transmitter is decreased in response to the comparison of monitored transmission power level

to a predetermined power transmission level. Therefore, Mitzlaff does not read on claims 6, 14, 19, 26, 34, 39, or 42, nor does it cure the deficiencies of Peterson et al. described above.

The Examiner properly recognized that Peterson et al. does not teach controlling the number of data bursts transmitted on the time slot in a frame at section 7 of the outstanding office action. However, the Examiner asserted that Chen cures the deficiencies of Peterson et al. Applicant respectfully disagrees with the Examiner's position. In particular, Applicant submits that Chen does not teach monitoring and controlling the number of data bursts, as required by claims 35 and 36 of the present application. Chen is drawn to a CDMA system and method for ensuring that a transmitter and a receiver are both transmitting and receiving at the same rate. (*See* column 3, lines 41-61, column 6, lines 29-48, and column 9, line 66-column 10, line 67). Although Chen alludes to power levels and data rates as noted in column 9, lines 66-67, cited for support by the Examiner, nowhere is it taught or suggested that specifically, data bursts are monitored and controlled. By contrast, claims 35 and 36 of the present application require monitoring and controlling, in particular, the number of data bursts in a time frame.

With regard to the Examiner's remaining rejections under 35 U.S.C. §103(a) rejections, Applicant respectfully submits that each of the rejected claims are patentable for the same reasons as discussed above. In particular, because Peterson et al. does not discuss any method or system for adjusting the output criteria and/or transmission power level based upon generated heat related criteria or according to predetermined transmission power limits, Applicant submits that these claims are allowable as well.

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1450. Should no proper payment be enclosed herewith, as by a

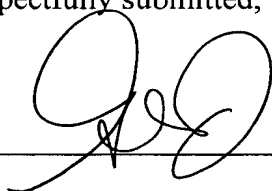
check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1450. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 06-1450.

Respectfully submitted,

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FOLEY & LARDNER LLP
Customer Number: 27433
Telephone: (312) 832-4553
Facsimile: (312) 832-4700

By



G. Peter Albert, Jr.
Attorney for Applicant
Registration No. 37,268